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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

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9 JOSEPH ANTONETTI,

Case No. 3:16-cv-00396-MMD-WGC

10 Plaintiff,

ORDER

11 v.

12 E.K. MCDANIELS et al.,

13 Defendants.

14 **I. DISCUSSION**

15 On April 5, 2017, this Court issued a screening order which permitted some claims
16 to proceed, dismissed some claims with prejudice, and dismissed other claims with leave
17 to amend. (ECF No. 3 at 20-21.) The Court granted Plaintiff thirty (30) days to file an
18 amended complaint. (*Id.* at 22.)

19 On April 19, 2017, Plaintiff filed a motion for reconsideration on Counts IV, VII, XII,
20 and XIII. (ECF No. 5 at 1-2, 5.) Plaintiff sought reconsideration on those counts but noted
21 that he was doing what he believed was “required to secure appeal.” (*Id.* at 6.) On April
22 24, 2017, Plaintiff filed a motion for an extension of time to file his amended complaint.
23 (ECF No. 6.)

24 A motion to reconsider must set forth “some valid reason why the court should
25 reconsider its prior decision” and set “forth facts or law of a strongly convincing nature to
26 persuade the court to reverse its prior decision.” *Frasure v. United States*, 256 F.Supp.2d
27 1180, 1183 (D. Nev. 2003). Reconsideration is appropriate if this Court “(1) is presented
28 with newly discovered evidence, (2) committed clear error or the initial decision was

1 manifestly unjust, or (3) if there is an intervening change in controlling law.” *Sch. Dist. No.*
2 *1J v. Acands, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). “A motion for reconsideration is not
3 an avenue to re-litigate the same issues and arguments upon which the court already has
4 ruled.” *Brown v. Kinross Gold, U.S.A.*, 378 F.Supp.2d 1280, 1288 (D. Nev. 2005).

5 **A. Count IV**

6 In Count IV of the complaint, Plaintiff challenged the prices of writing supplies at
7 the canteen and alleged that he had been forced to end personal relations due to the
8 expense of letter correspondence. (ECF No. 1-1 at 17.) In the screening order, the Court
9 analyzed the allegations as an Equal Protection Claim and found that Plaintiff failed to
10 state a claim because neither inmates nor the poor were protected classes. (ECF No. 3
11 at 10.) In the motion for reconsideration, Plaintiff argued that the excessive costs of
12 stamps and pens prevented him from corresponding with friends and violated his First
13 Amendment right to communicate by mail. (ECF No. 5 at 1.)

14 The Court finds that it did not commit clear error in the screening order. Although
15 prisoners have a First Amendment right to send and receive mail, Plaintiff has not
16 established that he has a First Amendment right for the prison to provide supplies cheap
17 enough for him to continue corresponding with his friends. As such, the Court denies the
18 motion for reconsideration on this count.

19 **B. Count VII**

20 In Count VII of the complaint, Plaintiff alleged that the state-run-inmate canteen
21 engaged in price gauging and had a monopoly. (ECF No. 1-1 at 22-23.) In the screening
22 order, the Court dismissed the equal protection claim because inmates were not a
23 protected class and Defendants appeared to charge all inmates the same prices. (ECF
24 No. 3 at 12.) In the motion for reconsideration, Plaintiff argued that “[r]obbery of all inmates
25 through monopoly, price gauging, should not permit N.D.O.C. to evade justice.” (ECF No.
26 5 at 2.)

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1 The Court denies the motion for reconsideration on this count. Plaintiff has not
2 provided any argument demonstrating that the Court committed clear error in its initial
3 decision.

4 **C. Count XII**

5 In Count XII of the complaint, Plaintiff argued that Defendants' use of wrist
6 restraints and ankle shackles to cause open wounds on Plaintiff violated Eighth
7 Amendment deliberate indifference. (ECF No. 1-1 at 34.) In the screening order, the Court
8 interpreted the Eighth Amendment violation as a claim for excessive force and found that
9 Plaintiff failed to state a claim. (ECF No. 3 at 16-17.) In the motion for reconsideration,
10 Plaintiff argued that the Eighth Amendment claim was for deliberate indifference to
11 serious medical needs and not excessive force. (ECF No. 5 at 3.)

12 The Court grants Plaintiff's motion for reconsideration in part for Count XII. In
13 viewing Count XII as a claim for deliberate indifference to serious medical needs rather
14 than excessive force, the Court finds that Plaintiff states a colorable claim.

15 The Eighth Amendment prohibits the imposition of cruel and unusual punishment
16 and "embodies 'broad and idealistic concepts of dignity, civilized standards, humanity,
17 and decency.'" *Estelle v. Gamble*, 429 U.S. 97, 102 (1976). A prison official violates the
18 Eighth Amendment when he acts with "deliberate indifference" to the serious medical
19 needs of an inmate. *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). "To establish an Eighth
20 Amendment violation, a plaintiff must satisfy both an objective standard—that the
21 deprivation was serious enough to constitute cruel and unusual punishment—and a
22 subjective standard—deliberate indifference." *Snow v. McDaniel*, 681 F.3d 978, 985 (9th
23 Cir. 2012).

24 To establish the first prong, "the plaintiff must show a serious medical need by
25 demonstrating that failure to treat a prisoner's condition could result in further significant
26 injury or the unnecessary and wanton infliction of pain." *Jett v. Penner*, 439 F.3d 1091,
27 1096 (9th Cir. 2006) (internal quotations omitted). To satisfy the deliberate indifference
28 prong, a plaintiff must show "(a) a purposeful act or failure to respond to a prisoner's pain

1 or possible medical need and (b) harm caused by the indifference.” *Id.* “Indifference may
2 appear when prison officials deny, delay or intentionally interfere with medical treatment,
3 or it may be shown by the way in which prison physicians provide medical care.” *Id.*
4 (internal quotations omitted). When a prisoner alleges that delay of medical treatment
5 evinces deliberate indifference, the prisoner must show that the delay led to further injury.
6 *See Shapley v. Nevada Bd. of State Prison Comm’rs*, 766 F.2d 404, 407 (9th Cir. 1985)
7 (holding that “mere delay of surgery, without more, is insufficient to state a claim of
8 deliberate medical indifference”).

9 The Court finds that Plaintiff states a colorable deliberate indifference to serious
10 medical needs claim. Based on the allegations, prison officials’ use of wrist and ankle
11 restraints on Plaintiff has caused the ankle shackles to cut into Plaintiff’s skin. (ECF No.
12 1-1 at 34.) According to Plaintiff, these injuries have prevented Plaintiff from walking to
13 the showers and to his medical visits because of the “extreme pain” caused by walking
14 with the shackles and the open wounds caused by those shackles. (*Id.*) This claim will
15 proceed against Defendants Foster, Deal, Sisco, Williams, Baker, Byrnes, and Gittere.¹

16 **D. Count XIII**

17 In Count XIII of the complaint, Plaintiff alleged multiple constitutional violations due
18 to the use of body restraints at his civil rights trial in federal court. (ECF No. 1-1 at 35-37.)
19 In the screening order, the Court found that Plaintiff was attempting to appeal decisions
20 of the trial court to this Court and dismissed the claim with prejudice. (ECF No. 3 at 18.)
21 In the motion for reconsideration, Plaintiff argues that the appeal of that case would not
22 address the constitutional violations. (ECF No. 5 at 6.)

23 The Court denies the motion for reconsideration on Count XIII. The Court finds that
24 Plaintiff has not demonstrated that the Court committed clear error in its initial decision
25 on this matter.

26 ¹To the extent that Plaintiff states in his motion for reconsideration that these
27 allegations may also raise claims for due process and violations of the American with
28 Disabilities Act, the Court makes no determination. (ECF No. 5 at 4.) Plaintiff did not raise
these claims in his complaint. (See ECF No. 1-1 at 34.)

1 **II. CONCLUSION**

2 For the foregoing reasons, it is ordered that the motion for reconsideration (ECF
3 No. 5) is granted in part. The Court grants the motion for reconsideration as to Count XII.
4 Count XII, alleging deliberate indifference to serious medical needs, will proceed against
5 Defendants Foster, Deal, Sisco, Williams, Baker, Byrnes, and Gittere.

6 It is further ordered that the motion for extension of time to file an amended
7 complaint (ECF No. 6) is granted. Plaintiff must file his amended complaint on or before
8 Wednesday, May 24, 2017.

9 It is further ordered that, if Plaintiff chooses to file an amended complaint, the Court
10 will screen the amended complaint in a separate screening order. The screening process
11 will take *several* months.

12 It is further ordered that, if Plaintiff chooses not to file an amended complaint curing
13 the stated deficiencies of the complaint, this action will proceed *immediately* against
14 Moore, Dugan, Sandoval (caseworker), Fletcher, Baker, Byrnes, Gittere, Deal,
15 McDaniels, Foster, and Southworth (Count I-retaliation and due process); Sisco,
16 McDaniels, Foster, Deal, Moore, Dugan, Sandoval (caseworker), Baker, Byrnes,
17 Fletcher, Gittere, and Kerner (Count II-retaliation); Sisco, McDaniels, Foster, Deal, Moore,
18 Dugan, Sandoval (caseworker), Baker, Byrnes, Fletcher, Gittere, Kerner, Williams, and
19 Governor Sandoval (Count II-denial of access to the courts); Boyd and Kerner (Count III
20 retaliation); McDaniels, Foster, Deals, Sisco, Baker, Byrnes, Fletcher, Gittere, Moore,
21 Dugan, Williams, and Southworth (Count III-mail violations); Boyd and Kerner (Count IV
22 retaliation); McDaniels, Sisco, Foster, Deal, Baker, Byrnes, Fletcher, Gittere, Kerner, and
23 Boyd (Count IV-mail violations); McDaniels, Foster, Deal, Sisco, Baker, Byrnes, Fletcher,
24 Gittere, and Hampton (Count VI-conditions of confinement); McDaniels, Foster, Deal,
25 Sisco, Baker, Byrnes, Fletcher, Gittere, Southworth, and Moore (Count VIII-due process);
26 McDaniels, Foster, Deal, Sisco, Williams, Baker, Byrnes, Fletcher, Gittere, and
27 Southworth (Count X-conditions of confinement); McDaniels, Foster, Deal, and Sisco

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1 (Count XI-due process); and Foster, Deal, Sisco, Williams, Baker, Byrnes, and Gittere
2 (Count XII-deliberate indifference to serious medical needs) only.

3 DATED THIS 25th day of April 2017.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written over a horizontal line.

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE